IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6378 of 1998
With
SPECIAL CIVIL APPLICATION No. 6382 of 1998

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge?

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SARVODAY COMMERCIAL CO OP BANKLTD. - Petitioner(s)
Versus
CHINUBHAI LAHERCHANDBHAI HARDE & 2 - Respondent(s)

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Appearance :
MR PRAKASH K JANI for Petitioner(s) : 1,
MR RC JANI for Respondent(s) : 1,
RULE SERVED for Respondent(s) : 2,
None for Respondent(s) : 3,
SERVED BY AFFIX.-(R) for Respondent(s) : 3.2.1,3.2.2
MS KJ BRAHMBHATT for Respondent(s) : 3.2.1,3.2.2

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 27/09/2006

COMMON ORAL JUDGMENT

1. These petitions involve similar questions of law and facts. They are, therefore, heard together and

are being disposed of by this common order.

2. The petitioner, who is common in both the petitions is a Cooperative bank. It is the case of the petitioner that respondent No.1 had availed of certain loans from the petitioner - bank by opening hypothecation account. Such loans were released by the petitioner in favour of respondent No.1 in the account by name of M/s.Rajendra Enterprise. Respondent No.1, the Principal debtor transferred this amount in another account in the name of M/s. Chirag Chemicals and Hosiery, of which, he was sole proprietor. Respondent No.2 was a guarantor for this loan. Respondent No.3 was the Manager of the bank at relevant time, who was also joined as a co-defendant, since the case of the petitioner bank was that he had in connivance with the other defendants, destroyed some important loan documents.

2.1. Finding that respondent No.1 had not repaid loan amount, the bank filed a suit before the Board of Nominees being Lavad Suit No.1041 of 1993 to recover the principal sum of Rs.3 Lacs with accumulated

interest.

2.3. The Board of Nominees, however, dismissed the suit of the bank by impugned Judgment dated 4th September 1995. The bank filed appeal against the said Judgment of the Board of Nominees. The Cooperative Tribunal, however, rejected the appeal of the bank by Judgment dated 25th June, 1998. These judgments are challenged by the bank in this Special Civil Application No.6378 of 1998.

3. Similarly for similar transaction with respondent No.1, the bank approached the Board of Nominees to recover principal amount with accumuleted interest by filing Lavad Suit No.911 of 1993. This suit, however, came to be dismissed by the Board of Nominees by impugned Judgment dated 4th September 1995. The appeal of the bank came to be rejected by the Cooperative Tribunal by Judgment dated 25th June 1998. The petitioner bank has therefore, challenged these orders in Special Civil Application No.6382 of 1998.

4. Since facts and evidence on record are

substantially similar in both the Lavad Suits, taking into account the evidence produced in Lavad Suit No.1041 of 1993, which is the subject matter of Special Civil Application No.6378 of 1998, would be sufficient.

5. The case of the petitioner bank is that respondent No.1 applied for a loan of Rs.3 Lacs with petitioner bank and sanction was granted to release the loan by the bank on 17th February 1990. Respondent No.2 stood as a guarantor for the said loan. The loan was ordered to be released on 28th August 1990. From the said hypothecation account by name of M/s. Rejendra Enterprise, a cheque was drawn by respondent No.1 for Rs. 3 Lacs and the amount was transferred in the account of M/s. Chirag Chemical and Hosiery of which also respondent No.1 was a sole proprietor.

5.1. It is further the case of the petitioner bank that respondent No.1 did not repay the amount and bank therefore, filed Lavad Suit before the Board of Nominees.

5.2.It is the case of the petitioner bank that respondent No.3 was the member of the bank. In fact the respondent No.1 was erstwhile Director of the bank. Respondent No.3, who was the Manager at relevant time, in connivance with other two respondents destroyed important documents of the loan for which criminal prosecution is lodged against three respondents and is pending. However, in the meantime, respondent No.3 has expired.

6. The Board of Nominees however, found that there is insufficient evidence to allow the suit of the bank. The stand of the respondent No.1 that he had not claimed any loan from the bank and that he has nothing to do with either M/s. Rajendra Enterprise or M/s. Chirag Chemicals and Hosiery, was accepted by the Board of Nominees. The Board of Nominees observed that the signatures are also not similar. The members attempted to compare the signatures in the official documents with the specimen signature of respondent No.1 and came to the conclusion that they are dissimilar.

6.1. With respect to respondents No.2 and 3 herein also, the Board of Nominees independently found that there is no evidence of respondent No.2 having stood as guarantor and respondent No.3 having liability towards the bank.

6.2. The appeal of the petitioners was rejected on the similar grounds.

7. I have heard learned advocates appearing on behalf of the parties and perused the material on record.

8. It is not disputed that an amount of Rs.3 Lacs of the Bank from the account of M/s. Rajendra Enterprise was transferred in the account of M/s. Chirag Chemical and Hosiery. There is also voluminous evidence to establish this fact. In fact, this aspect has not been seriously disputed by the respondents. Further, the bank had also produced original application and Resolution for releasing the loan in favour of respondent No.1. The case of the respondent No.1, however, is that he had not signed any of these

documents and the cheque by which the amount of Rs.3 Lacs was transferred from M/s. Rajendra Enterprise to M/s. Chirag Chemicals and Hosiery and that he had at no point of time availed any facility of loan from the petitioner bank.

9. Since the amount of Rs.3 Lacs did get transferred from bank into account of M/s. Rajendra Enterprise and then into account of M/s. Chirag Chemicals and Hosiery.

9.2. It may be noted that undisputedly the account of M/s. Chirag Chemicals and Hosiery was existing old account and not newly opened contemporary with releasing of loan facility by the petitioner bank in February 1990. It is also undisputed that respondent No.1 was erstwhile Director of the petitioner Bank. Therefore, neither respondent No.1 nor the account of M/s. Chirag Chemicals and Hosiery were unknown to the petitioner bank. It is in this respect that the deposition of the Manager of the bank Shri Maheshbhai Balkrushan Mandiwala (Exhibit 38) assumes significance. In his deposition before the Board of Nominees, the witness stated that respondent No.1 is

the owner and proprietor of M/s. Rajendra Enterprise and had applied for hypothecation account to the bank, which was accepted by the Board of Directors of the bank on 17th February 1990. He has produced supporting documents such as relevant Resolution etc. He has also produced the specimen signatures of respondent No.1 for opening hypothecation account in the petitioner bank, which was signed as proprietor of M/s. Rejendra Enterprise. The witness further stated that respondent No.1 had other accounts in the bank in form of Loan Account, Current Account and Savings Account. The witness had the occasion to identify the signatures of respondent No.1, he was, therefore, in a position to identify the signatures of respondent No.1, which was in the specimen signature card. The witness has further stated that respondent No.1 had issued a cheque No.511401 dated 28th February 1990 from the said hypothecation account of M/s. Chirag Chemicals and Hosiery. The original cheque was presented before the Court, which bears the signatures of respondent No.1 as proprietor of M/s. Rajendra Enterprise, which was also identified by the witness. He also produced

original vouchers of transferring the said amount in the account of M/s. Chirag Chemicals and Hosiery. He also produced original cheques issued by respondent No.1 signed by him as proprietor of M/s. Chirag Chemicals and Hosiery. The witness identified signatures also before the Court. He stated that certain documents such as promissory note, hypothecation agreement etc. could not be produced before the Court. This witness was cross-examined on behalf of respondent No.1. To this witness, no questions were asked about the most important statements made by him. On behalf of respondent No.1, no challenge was made to the disclosure made by the witness regarding the signatures of respondent No.1 at various places for and on behalf of M/s. Rejendra Enterprise as well as M/s.Chirag Chemicals and Hosiery. To the above important aspect of the matter, contained in the deposition of the witness, which have been noted hereinabove; on behalf of respondent No.1; there was virtually no cross-examination. Thus, substantial portion of the evidence of this witness remained completely unchallenged.

10. This is important aspect of the matter. As Bank Manager, this witness assumed considerable significance. Besides other things, he deposed about the application made by respondent No.1 for seeking loan. The witness also identified the signatures of respondent No.1 at several places including in the account of M/s. Rejendra Enterprise and M/s. Chirag Chemicals and Hosiery. He identified the signatures on the basis of his familiarity with the signatures of respondent No.1, since respondent No.1 had several other accounts in the bank. In view of this factually unopposed deposition of the witness of the Bank, it was not open for the Board of Nominees to doubt about the signatures of respondent No.1 and to attempt to compare the signatures himself. In cross-examination, nothing worthwhile has been brought on record to diminish the value of the deposition of this witness. In fact with respect of this vital aspect of the matter, there was no cross at all.

11. Two important aspects, therefore, emerge. Firstly, the Manager of the bank deposed before the Board of Nominees that the loan was obtained by

respondent No.1 and the amount was transferred under his signature in another account also operated by him. Secondly, with respect to connection to this respondent with the account of M/s. Chirage Chemicals and Hosiery, there was no cross-examination to disassociate himself from the said account.

12. In view of the overwhelming evidence, which has remained largely unopposed, the Board of Nominees could not have attempted to compare signatures itself. There was no possibility of discarding this evidence and without discarding evidence, it was not possible to attempt the comparison of the signatures. In my view, the Board of Nominees committed grave error in its factual findings which suffer from perversity. Unfortunately, the Cooperative Tribunal also did not detect this error and rejected the appeal of the bank.

13. Entire evidence and all aspects of the matter being identical in both suits, for deciding Special Civil Application No.6382 of 1998, I do not find it necessary to individually repeat this discussion in

this regard.

14. Suffice it to say that I find the Board of Nominees had committed grave error in rejection of the suits filed by the bank against respondent No.1.

15. With respect to respondent No.2, however, in absence of supporting documents, it is not possible to overturn factual findings of the lower Courts. With respect to respondent no.3, similarly I do not see any case where liability can be attached on the said respondent to repay the loan.

16. Above discussion is confined to the proceedings before this Court and is based on the evidence on record. Criminal proceeding against respondent stands entirely different footing and will be decided on such evidence that may be led, uninfluenced by the observations made by this Court in this order.

17. In the result, the petitions are partly allowed. The impugned orders passed by the Board of Nominees as well as the Cooperative Tribunal and so far as

against respondent No.1 are set aside. The impugned orders qua respondent No.2 and 3 are confirmed. The Board of Nominees shall draw decree accordingly.

18. Rule is made absolute to the above extent with no order as to costs.

(AKIL KURESHI, J.)

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